UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION TWENTY-FIVE

SEAFARERS INTERNATIONAL UNION ATLANTIC, GULF, LAKES AND INLAND WATERS DISTRICT, NMU, AFL-CIO, Charged Party,

and

CASE NO. 25-CD-301

LUEDTKE ENGINEERING COMPANY, Charging Party,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #150,
Party in Interest.

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Hearing Date: January 26, 2010

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BRIEF TO THE NATIONAL LABOR RELATIONS BOARD REGARDING ASSIGNMENT OF LAND-BASED EQUIPMENT TO THE SEAFARERS INTERNATIONAL UNION

NOW COMES LUEDTKE ENGINEERING COMPANY, by and through its attorney ROBERT E. DAY, P.C. and states as follows:

I. THE DISCLAIMER IS DEFECTIVE.

Inconsistent Action.

Sometime on Monday, January 25, 2010 an IUOE Local #150 Disclaimer of Interest was filed. Two grievances are in the record, one involving the request for the picker (Bd. Ex. #4) and the other for a pre-job conference at which time the IUOE would seek the hydraulic picker (Er. Ex. #6). The last meeting with the Operating Engineers over those grievances was December 16, 2009. At hearing both grievances were still pending and had not been cancelled or withdrawn evidencing behavior which is inconsistent with the disclaimer (Tr. p. 29).

II. THE DISCLAIMER IS ALSO TOO NARROW.

Besides the inconsistent action of maintaining the two November 30, 2009 grievances, there is Local 150's inability to speak for and bind a "Union" of ten (10) affiliates. The Great Lakes Floating Agreement is an International Agreement (*See*, GLFA, Er. Ex. 1, page 5.) Its terms to require enforcement by the individual affiliates of which there are ten (10) in number (*See*, GLFA, Er. Ex. #1, Opening Statement, Transcript page 17). The "Union" (*i.e.* ten affiliates) functions through a "Joint Representative", and Local #150 is only one of several unions negotiating the Great Lakes Floating Agreement on behalf of the international union. Local #150 can only disclaim on its own behalf and has not established authority to disclaim on behalf of the "Joint Representative". This is significant because the Employer could not bargain the disclaimer only with Local #150, as the Joint Representative, as it cannot piecemeal bargain the

Union and would be committing an 8(a)(5) and arguably Local #150 is committing an 8(b)(3). See, CBS Broadcasting, Inc., 343 NLRB #96, 176 LRRM 1147 (20004). Because of this limitation, the disclaimer (Bd. Ex. #3) has to be effective for the entire Union, otherwise settling a dispute in Local #150's jurisdiction may still leave this dispute alive with the other nine (9) affiliates of the Operating Engineers. Further, because Luedtke's work is frequently and continuously performed throughout the entire Great Lakes Basin, from New York to Ohio, to Wisconsin to Minnesota, and throughout Michigan as well as obviously Indiana and Illinois (Tr. pp. 38, 66), this picker assignment exists with the remaining "Joint Representative" or nine (9) other affiliates.

III. INTRODUCTION.

Luedtke Engineering Company has been a marine dredging contractor since the early 1950s and has done hydraulic dredging since about 1987. Hydraulic dredging involves the hydraulic movement of water not petro chemical byproducts like oil or gasoline (Tr. pp. 39, 40, 97). The at-issue hydraulic "picker" is a welded, land-based piece of equipment mounted on a barge (Tr. p. 91). It is not powered by nor utilizes water-associated hydraulics, but rather conventional petro chemical-related oil products (Ex. #10).

IV. THE DISPUTE.

Luedtke Engineering Company received a contract from the Army Corps of Engineers to dredge 77,220 cubic yards at Burns Ditch, Indiana (Er. Ex. #9), a job that was received in September 2009 and commenced in late October 2009 and finished by late December of 2009 (Bd. Ex. #4). At the outset of the job, Local #150 of the Operating Engineers claimed that the hydraulic picker was covered work under the Great Lakes Floating Agreement ("GLFA") (Er. Ex. #1).

V. THE WORK OF THE PICKER.

Notwithstanding the IUOE, Local #150 disclaimer, some mention should be made as to what actual work is being disclaimed by Board Exhibit #3. The recognition clause in the SIU contracts claims "land equipment engaged in assisting hydraulic dredges" as belonging to the SIU. Such work thereafter is assignable to "Operators of all types of equipment ..." (Er. Ex. #2).

Employer Exhibit #s 9 and 16 are all which are needed to put factual substance to the above. All hydraulic dredge jobs have a mobilization, performance and demobilization phase (Tr. pp. 54, 86). The picker at Burns Ditch was used continuously for three days during mobilization to connect and lay pipe. Thereafter, from November 4, 2009 to December 18, 2009 it was used sporadically *i.e.* no more than an hour a day by any of four operators to move underwater pipes, and lift anchors (Tr. p. 54). The third phase was demobilization, basically a tear-down, *i.e.* of the above, a three-day process. The first and third phase (non-dredging) was a one-shift workday. The middle phase was a seven-day, twenty-four-hour, two-shift dredging operation.

Board Exhibit #4 is the IUOE grievance demanding an extra man be hired to run the picker (on each shift) and thereafter the Employer "find other work for operator during the shift" (Tr. pp. 80, 94).

The "other work" would require either adding to the SIU crew, or diminishing the crew and thus inevitably encroaching on SIU work not claimed and not at issue (Bd. Ex. #4).

VI. EMPLOYER CONTENTIONS.

The Employer contends this dispute is not covered by the IUOE's Great Lakes Floating Agreement and that the GLFA has no applicability to any assignment over any work jurisdiction listed or assigned to the SIU. It follows the Great Lakes Floating Agreement itself thus provides

no basis for a pre-job conference (Er. Ex. #6) claiming a hydraulic picker mounted on a barge used to assist hydraulic dredging (Bd. Ex. #4). Pictures of the picker (Er. Ex. #11 and #12) and the hydraulic dredge ("Sue Lyon") (Er. Ex. #10 and #13) depict use of land-based equipment, in this case, a hydraulic picker mounted on a floating barge (Er. Ex. #12) which is specifically covered by the Seafarers International Union Agreement, Recognition Clause containing language specifically referencing cranes and operators of all types of land equipment assisting hydraulic dredging with language that has been in place since at least 1991 (See Er. Ex. #2 and #3).

If the picker and this assignment belongs to employees who are members of the Seafarers Union, then the picker assignment could not arise under the Great Lakes Floating Agreement and any still pending grievances are without merit. Further, the IUOE has previously waived and abandoned such claims in 1996 (Er. Ex. #17) (Tr. pp. 64, 65).

VII. PAST EMPLOYER PRACTICES UTILIZING LAND-BASED EQUIPMENT/ HYDRAULIC DREDGING.

Luedtke Engineering Company has historically used a hydraulic picker to assist water-borne movements associated with hydraulic dredging. As previously recited, these movements involve lifting 500-pound anchors, moving lengths of pipe laying on the lake bottom, and related dredge movements (Tr. p. 54). Aside from the few days of mobilization and the few days of demobilization (Er. Ex. #9), the Employer operates on a two-shift basis, twenty-four (24) hours a day/seven (7) days a week, with experienced employees occasionally operating the hydraulic picker for less than an hour a day if at all (Tr. p. 54). Other equipment as evidenced by the summary of the Corps jobs involves a scow as well as a tug named the *Eric Luedtke* (Er. Ex. #11, #12, #13) and is identified to fill out the picture.

VIII. WHY DOES THIS DISPUTE EXIST?

This dispute exists because beginning in 1996, the IUOE Great Lakes Floating Agreement (Ex. #1) added for the first time classifications and descriptions for hydraulic dredging. As a result the GLFA thereafter contained classifications referring to both mechanical dredging as well as water-borne hydraulic dredging. The record reflects that mechanical dredging is a different process manned by a composite crew of Seafarers and actual Operating Engineers (Er. Ex. #14) (Tr. pp. 22, 97, 98). The record further reflects that hydraulic dredging has always since 1991 been assigned top-to-bottom to experienced crews represented by the Seafarers (Tr. p. 24, 30). This is in large part is because the hydraulic dredge involves much more water-related, water-borne and water-intensive activities (Tr. p. 99). This 1996 addition of hydraulic dredging to the GLFA also led to a Luedtke/IUOE labor dispute resolving that the dispute. Exhibit #17 is an International Agreement resolving that dispute wherein the IUOE cedes to the SIU hydraulic dredging (Tr. pp. 64,65).

Ex. #17 is the two-page 1996 Settlement Agreement between the General President of the Operating Engineers and Luedtke Engineering Company resolving ancillary NLRB disputes and wherein the Operating Engineers, through their International President, cede hydraulic dredging work classifications which were for the first time explicitly listed in the GLFA agreement and which were agreed to be excluded from the GLFA agreement and ceded to the SIU (Tr. p. 65). From the time of that agreement in 1996, Luedtke Engineering Company, through Kurt Luedtke its President and before that as its Vice President has assigned water-borne hydraulic dredging operations to its employees represented by the Seafarers including "land equipment engaged in assisting the hydraulic dredges" (Er. Ex. #2 and #3, p. 5) (Tr. pp. 65,66). That this International

Agreement has never been rescinded is undisputed. That 1996 IUOE agreement has somehow been disregarded by Local #150 and presumptively other affiliates cannot be denied.

IX. PAST JOBS; FUTURE WORK.

The record reflects that existing on the books are future jobs with this SIU crew and this equipment arguably under the purview of the IUOE and the Great Lakes Floating Agreement albeit in Local #324's jurisdiction (Er. Ex. #20) (Tr. pp. 71, 72).

The record also reflects that in the past the Employer has worked without incident in Hammond, Indiana and in Gary, Indiana (Er. Ex. #18 and Ex. #19) using a <u>hydraulic</u> picker with its other hydraulic dredges such as the "*Lucille T*" which is and has been owned and operated by Luedtke Engineering (Er. Ex. #15).

X. OTHER SIMILAR RECENT PAST DISPUTES EXIST – ARTICLE XX, WOLF LAKE.

On July 3, 2007, an AFL-CIO Article XX decision was rendered by umpire Michael Gottesman under the AFL-CIO Constitution involving a claim by the Operating Engineers that its contract mandated recognition of hydraulic dredging work assigned to the Seafarers in dredging and creation of an island at Wolf Lake, Indiana. The Operators claimed the work at Wolf Lake in 2006 was "construction", and thus there was no Article XX jurisdiction. The Employer was not present for those proceedings and not invited to be present. The case came down to whether or not Luedtke was entitled to have employees represented by the Seafarers do the hydraulic dredging. That dispute took one (1) year to resolve, *i.e.* from the Summer of 2006 to June 2007, and did not end IUOE, Local #150's interest in Luedtke's hydraulic dredging (*See*, Er. Ex. #7).

XI. THE CONTINUING NATURE OF THIS DISPUTE.

The NLRB must speak to this continuing conflict and make an appropriate award to the

Seafarers of "land equipment" engaged in assisting hydraulic dredges run by "operators of all

types of equipment" and "cranemen" that are incidental integral to hydraulic dredging (See Er.

Ex. #2 and #3). As can be seen, the Employer has established past practices, and has efficiently

used a crew of SIU-represented employees to do all facets of this work. It has never assigned an

IUOE member to hydraulic-related work (Tr. pp. 30, 31, 98).

The Employer has been unable to resolve this dispute in negotiations with the

International President (Ex. #19) or through the Article XX proceedings at Wolf Lake (Er. Ex.

#7). Only through the National Labor Relations Board can a "union" comprised of and the "ten

affiliates" resolve this dispute under an International Agreement covering the entire Great Lakes

Basin from Duluth, Minnesota to the end of the St. Lawrence Seaway.

Respectfully submitted,

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Dated: February 1, 2010

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CERTIFICATE OF SERVICE

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STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

Robert E. Day, being first duly sworn, deposes and states that on February 1, 2010 he served the following pleading: Brief To The National Labor Relations Board Regarding Assignment Of Land-Based Equipment To The Seafarers International Union upon the following attorneys of record via e-mail at their respective e-mail addresses listed below below:

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Further affiant sayeth not.

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